

FILED

OCT 14 1997

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

CLERK, U. S. BANKRUPTCY COURT  
TAMPA DIVISION

In Re )  
 )  
AMENDMENT TO THE COURT'S ) No. 98-0002-MIS-FLM  
LOCAL RULES. )  
 )  
\_\_\_\_\_ )

ORDER AMENDING LOCAL RULES

The court has identified the need to amend certain of the court's local rules, specifically Local Rules 1020-1, 2007.1-1, 3017-2, 5073-1, and 9015-1. The court consulted the court's Local Rules Lawyers Advisory Committee, and the committee concurred in the advisability of the amendments under consideration.

Accordingly, the court preliminarily approved these amendments. The Clerk then promulgated the proposed amendments to the bar and to the public and invited comments. The time for presenting comments has now expired.

Upon thorough consideration, therefore, it is now appropriate to adopt the proposed amendments as a consequence of the public comment process pursuant to the requirements of F.R.B.P. 9029 and F.R.Civ.P. 83.

Accordingly, the court orders as follows:

1. Abrogation of Local Rule 1020-1. The present text of the court's Local Rule 1020-1 is amended in the manner that follows (with new matter highlighted and deleted matter lined through):

**Rule 1020-1**

**CHAPTER 11 SMALL BUSINESS CASES -- GENERAL**

**[Abrogated]**

~~ELECTION TO BE CONSIDERED A SMALL BUSINESS IN A CHAPTER 11 REORGANIZATION CASE. In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the court, for cause, may fix.~~

---

*Notes of Advisory Committee*

**1998 Amendment**

On December 1, 1997, amendments to the Federal Rules of Bankruptcy Procedure added new Rule 1020, entitled "Election to be Considered a Small Business in a Chapter 11 Reorganization Case." This new rule was made necessary by the amendments to the Bankruptcy Code included in the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394. The Court had adopted L.B.R. 1020-1 in 1995 as an interim matter pending amendment of the Federal Rules of Bankruptcy Procedure. The local rule is now abrogated as duplicative of national rule.

This amendment is effective on October 15, 1998.

2. Abrogation of Local Rule 2007.1-1. The present text of Local Rule 2007.1-1 is amended in the manner that follows (with new matter highlighted and deleted matter lined through) :

**Rule 2007.1-1**

**TRUSTEES & EXAMINERS (Ch. 11)**

**[Abrogated]**

~~(a) REQUEST FOR AN ELECTION. A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Bankruptcy Rule 5005 within the time prescribed by § 1104(b) of the Bankruptcy Code. Pending court approval of the person elected, a person appointed under § 1104(d) shall serve as trustee.~~

~~(b) MANNER OF ELECTION AND NOTICE. An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Bankruptcy Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under Bankruptcy Rule 2002(a). A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any other party entitled to solicit a proxy under Bankruptcy Rule 2006.~~

~~(c) APPLICATION FOR APPROVAL OF APPOINTMENT AND RESOLUTION OF DISPUTES. If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the court, the United States trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under Bankruptcy Rule 2007.1(b), except that the application does not have to contain names of parties in interest with whom the United States trustee has consulted. If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after~~

~~the date of the creditors' meeting called under § 1104(b), a person appointed by the United States trustee in accordance with § 1104(d) of the Code and approved in accordance with Bankruptcy Rule 2007.1(b) shall serve as trustee.~~

---

## *Notes of Advisory Committee*

### **1998 Amendment**

On December 1, 1997, amendments to the Federal Rules of Bankruptcy Procedure amended Rule 2007.1. These amendments were made necessary by amendments to the Bankruptcy Code included in the Bankruptcy Reform Act of 1994, Pub. L. 103-394. The Court had adopted L.B.R. 2007.1-1 in 1995 as an interim matter pending amendment to the Federal Rules of Bankruptcy Procedure. The local rule is now abrogated as duplicative of the national rule.

This amendment is effective on October 15, 1998.

3. Abrogation of Local Rule 3017-2. The present text of Local Rule 3017-2 is amended in the manner that follows (with new matter highlighted and deleted matter lined through):

### **Rule 3017-2**

#### **DISCLOSURE STATEMENT -- SMALL BUSINESS CASES**

##### **[Abrogated]**

~~(a) Conditional Approval. If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Bankruptcy Rule 3016.~~

~~On or before conditional approval of the disclosure statement, the court shall~~

~~(1) fix a time within which the holders of claims and interests may accept or reject the plan,~~

~~(2) fix a time for filing objections to the disclosure statement,~~

~~(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed, and~~

~~(4) fix a date for the hearing on confirmation.~~

~~(b) Application of Bankruptcy Rule 3017. If the disclosure statement is conditionally approved, Bankruptcy Rule 3017(a), (b), (c), and (e) do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying Bankruptcy Rule 3017(d).~~

~~(c) Objections and Hearing on Final Approval. Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Bankruptcy Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.~~

---

*Notes of Advisory Committee*

**1998 Amendment**

On December 1, 1997, amendments to Federal Rules of Bankruptcy Procedure added new Rule 3017.1, entitled "Court Consideration of Disclosure Statement in a Small Business Case." This new rule was made necessary by the amendments to the Bankruptcy Code included in the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394. The Court had adopted L.B.R. 3017-2 in 1995 as an interim matter pending amendment of the Federal Rules of Bankruptcy Procedure. The local rule is now abrogated as duplicative of the national rule.

This amendment is effective on October 15, 1998.

4. Amendment to Local Rule 5073-1. The present text of Local Rule 5073-1 is amended in the manner that follows (with new matter highlighted and deleted matter lined through):

**Rule 5073-1**

**PHOTOGRAPHY, RECORDING DEVICES &  
BROADCASTING  
PHOTOGRAPHS; BROADCASTING OR TELEVISING;  
USE OF COMPUTERS AND COMMUNICATION DEVICES**

~~(a) The taking of photographs, the broadcasting, televising or recording of proceedings other than by official officers or Court appointed reporters in the Court or in any courtroom or hearing room connected therewith are prohibited, except for the taking of photographs, recording or taping of ceremonies for the investing of judicial officers, other official ceremonies or functions as authorized by the Court, or except for the recording or transcribing by a~~

~~private court reporter at a meeting held pursuant to 11 U.S.C. § 341.~~

~~—— (b) No photographic, broadcasting, television, sound or recording equipment of any kind will be permitted in or about such courtrooms or hearing rooms, including the entire floor or floors of any privately owned facility in which the Court conducts its business, except for the taking of photographs, recording or taping of ceremonies for the investing of judicial officers or other official ceremonies or functions as authorized by the Court.~~

~~—— (c) Nothing in this rule shall prohibit the use of dictation or computer equipment in conjunction with reviewing files in the Clerk's Office or, subject to Court control, the use of computer equipment in the courtroom.~~

Rule 4.11 of the Local Rules of the United States District Court for the Middle District of Florida applies in the Court in all cases under Title 11 and in all civil proceedings arising under Title 11, or arising in or related to cases under Title 11.

---

### ***Court's Notes***

### ***1998 Amendment***

The local rules of the District Court generally do not apply in the Bankruptcy Court. See L.B.R. 1001-1(d). In most instances within the district, the Bankruptcy Court's facilities are now located in the same federal courthouse in which the District Court's facilities are located. It is therefore desirable to have the same rules apply in both the District Court and the Bankruptcy Court that govern the photographing, broadcasting, and televising of court proceedings, the use of computers and communication devices in court facilities, and the introduction of such equipment and devices

into the building in which court proceedings are conducted. Accordingly, this amendment simply deletes the Bankruptcy Court's rule on these subjects and applies in the Bankruptcy Court the provisions of the District Court's corresponding local rule.

The text of the District Court's local rule presently is as follows:

**RULE 4.11 PHOTOGRAPHS; BROADCASTING  
OR TELEVISION; USE OF COMPUTERS  
AND COMMUNICATION DEVICES**

(a) (1) As approved by the Judicial Conference of the United States at its March, 1979 meeting, the taking of photographs and the recording or taping of ceremonies for the investing of judicial officers and of naturalization proceedings and the possession of necessary equipment therefor is authorized in courtrooms of this Court and the environs thereof. At least three (3) hours prior notice of the use of recording or television equipment shall be given to the presiding judge who may control the placement of such equipment in the courtroom.

(2) Otherwise, the taking of photographs, the operation of recording or transmission devices, and the broadcasting or televising of proceedings in any courtroom or hearing room of this Court, or the environs thereof, either while the Court is in session or at recesses between sessions when Court officials, attorneys, jurors, witnesses or other persons connected with judicial proceedings of any kind are present, are prohibited.



(b) In order to facilitate the enforcement of subsection (a) (2) of this rule, no photographic, broadcasting, television, sound or recording equipment of any kind (except that of Court personnel and as authorized by subsection (a) (1) thereof) will be permitted in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as is designated by the resident judges of the Division in which such building is located. Such designation shall be made by order, filed in the office of the Clerk in such division. Except that of Court personnel, cellular telephones and computer equipment are likewise prohibited in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as designated by the resident judges in the manner set forth in the proceeding sentence, unless otherwise permitted by the judicial officer before whom the particular case or proceeding is pending. This rule does not prohibit the possession of telephonic pagers in such locations, provided that such pagers are either switched off or placed in a silent activation mode while in such locations.

(c) Employees of other federal agencies resident within the security perimeters of buildings in this District housing federal courts or proceedings, with valid agency identification, are permitted to transport any of the equipment identified above through security checkpoints for the purpose of using same, in their official capacities, within areas of such buildings not covered by

subsection (b) of this rule. Said equipment shall be subject to inspection by the United States Marshals Service.

This amendment is effective on October 15, 1998

5. Amendment to Local Rule 9015-1. The present text of Local Rule 9015-1 is amended in the manner that follows (with new matter highlighted and deleted matter lined through):

### **Rule 9015-1**

#### **JURY TRIAL**

(a) ~~Trial by Jury. Issues triable of right by jury shall, if timely demanded, be by jury, unless the parties or their attorneys of record, by written stipulation filed with the Clerk or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury.~~

~~(b) Demand.~~

~~(1) Time, Form. Any party may demand a trial by jury of any issue triable by a jury by serving on the other parties a demand therefor in writing not later than ten (10) days after service of the last pleading directed to such issue. The demand may be indorsed on a pleading of the party. When a jury trial is demanded it shall be designated by the Clerk in the docket as a jury matter.~~

~~(2) Specification of Issues. In the demand a party may specify the issues to be so tried; otherwise the party shall be deemed to have demanded trial by jury of all the issues so triable. If a jury trial is demanded on only some of the issues, any other party within ten (10) days after service of the demand of such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues.~~

~~(3) Determination by Court. On motion or on its own initiative the Court may determine whether there is right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition shall be granted.~~

~~(c) Waiver. The failure of a party to serve a demand as required by this rule and to file it, as required by F.R.B.P. 5005, constitutes a waiver of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.~~

~~(d) Trial by Court. Issues not demanded for trial by jury shall be tried by the Court. Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the Court on its own initiative may order a trial by jury of any or all issues. The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.~~

~~(e) APPLICABILITY OF CERTAIN OF THE FEDERAL RULES OF CIVIL PROCEDURE. Rules 47-51 of F.R.Civ.P. apply when a jury trial is conducted.~~

~~(f) The method of voir dire examination and exercise of challenges in selection of the jury shall be as specified by the Court. A list of the venire will be furnished to counsel only at the time the case is called for trial, and prior to commencement of voir dire examination (unless otherwise required by governing rule or statute), and must be returned to the Clerk when the jury is empaneled. No person shall copy from or reproduce, in whole or in part, a list of the venire.~~

(~~g~~<sup>b</sup>) All requests for instructions to the jury shall be submitted in writing within the time specified by the Court. Such requests, and supplemental requests, if any, shall be marked with the name and number of the case, shall designate the party submitting the request, shall be numbered in sequence, and shall contain citation of supporting authorities, if any.

(~~h~~<sup>c</sup>) No attorney or party shall undertake, directly or indirectly, to interview any juror after trial in any civil case except as permitted by this rule. If a party believes that grounds for legal challenge to a verdict exists, the party may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion shall be served within ten (10) days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion shall state the name and address of each juror to be interviewed and the grounds for the challenge that the moving party believes may exist. The presiding judge may conduct such hearings, if any, as necessary, and shall enter an order denying the motion or permitting the interview. If the interview is permitted, the Court may prescribe the place, manner, conditions, and scope of the interview.

---

### *Notes of Advisory Committee*

#### ***1998 Amendment***

On December 1, 1997, amendments to the Federal Rules of Bankruptcy Procedure added new Rule 9015, entitled "Jury Trials." This new rule was made necessary by the addition of 28 U.S.C. § 157(e) contained in the Bankruptcy Reform Act of 1994, Pub. L. 103-394. The Court had adopted paragraphs (a) through (e) of L.B.R. 9015-1 because their subject matter was not covered in the Federal Rules of Bankruptcy Procedure. These

paragraphs of the local rule are now abrogated as duplicative of the national rule.

The remaining parts of the local rule, paragraphs (f) through (h), are derived from the comparable District Court Local Rule 5.01. These paragraphs are redesignated paragraphs (a) through (c), respectively.

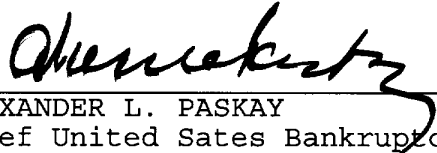
The District Court has specifically designated all of the bankruptcy judges of the Court to conduct jury trials pursuant to 28 U.S.C. § 157(e). See District Court Order No. 94-127-MISC-J-16, entered on December 1, 1994. Although F.R.B.P. 9015(b) contemplates that the Court by local rule might establish a time by which the parties must consent to a jury trial conducted by a bankruptcy judge, this amendment does not attempt to establish such a time. Instead, the Committee is of the view that the parties and the Court should have the flexibility to allow consent to be given at any time.

This amendment is effective on October 15, 1998.

3. Effective Date. These amendments shall govern all cases and proceedings commenced on and after October 15, 1998, and insofar as practicable, all cases and proceedings then pending.

DONE and ORDERED upon the vote of all of the judges in Tampa, Florida, this 14<sup>th</sup> day of October, 1998.

For the Court:

  
ALEXANDER L. PASKAY  
Chief United States Bankruptcy Judge